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THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

KEVIN SMITH,

Defendant.

21 CR 128

Honorable Judge

John F. Kness

**DEFENDANT'S CONSOLIDATED REPLY TO GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS WITH EXTREME PREJUDICE AND
DEFENDANT'S MOTION TO DISMISS COUNTS DUE TO MULTIPLICITY**

Now comes the defendant, Kevin Smith, by and through himself, respectfully submits this consolidated reply to the Government's response to the defendant's Motion to Dismiss with Extreme Prejudice for Insufficient Process, Insufficient Service of Process, and Lack of Personal Jurisdiction and/or Motion to Quash Process (R. 48) and his Motion to Dismiss Counts due to Multiplicity (R. 51):

I. Motion to Dismiss with Extreme Prejudice for Insufficient Process, Insufficient Service of Process, and Lack of Personal Jurisdiction and/or Motion to Quash Process.

Counsel for the Government states that, I, Kevin Smith, the defendant, appear to be arguing that the court does not have jurisdiction over me in this case. The Government's statement appears to imply that the most potent argument in the motion (Dkt. 48) is jurisdiction. This apparent opinion is false. The motion is based upon Due Process Violations that encompass jurisdiction because of the insufficient process and insufficient service of process. Counsel for the government appears to admit that it did not follow very important rules which will be addressed in this reply.

Due process is a requirement that legal matters must be resolved according to established rules and principles, and that individuals must be treated fairly. Due Process occurs in both Civil and Criminal matters. The aforementioned definition of Due Process or a similar version of this definition is mentioned and quoted by numerous respected legal authorities such as The American Bar Association, Cornell Law School and Black's Law Dictionary. Failure to issue an arrest warrant or a summons before an alleged, or in this case, a fictitious arrest, appears to be a clear violation of the fifth (5th) and fourteenth (14th) amendment's Due Process Clause. The Due Process Clause states procedural due process requires that when the federal government acts in a way that denies a citizen of a life, liberty, or property interest, the person must be given notice, the opportunity to be heard, and a decision by a neutral decision-maker.

Substantive Due Process is a principle allowing courts to protect certain fundamental rights from government interference, even if procedural protections are present or the rights are not specifically mentioned elsewhere in the U.S. Constitution. Counsel for the government has failed to comply with and follow the local rules for the district and/or the Federal Rules of Criminal Procedure. By the government skipping processes as spelled out in Rules 5 and 9 of the Fed.R.Crim.P., it has deprived me of my liberty and rights.

I, Kevin Smith, the defendant, raised the fact to Seema Ahmad, who was supposedly representing me at the time, that the copy of the indictment that was given to me was unsigned. I told and explained to attorney Seema Ahmad that the indictment had errors and didn't spell out the charges in clear and concise language causing me to not understand the charges. I also informed attorney Seema Ahmad that the indictment was not signed and that it seemed this was in violation of the Federal Rules of Criminal Procedure Rule 7 (c) (1). Attorney Seema Ahmad responded by telling me, Kevin Smith, the defendant, that the judge might not want to discuss that at the hearing. (Dkt. 49 pgs. 3&4) Furthermore, attorney Seema Ahmad said that the judge

could just let counsel for the government sign the indictment to which I replied, ‘that would be like a document being notarized on a different date from when the signing took place and without the signor being present.’ If Ms. Ahmad truly had my best interest in mind, she would have informed me that there was in fact a signed and sealed indictment at docket 2 for this case and not answered me in the manner that she did.

The government states that the Fed.R.Crim.P. 9(a) does not require that every defendant ever charged with a federal crime must be arrested by an officer in possession of a warrant in order for the Court to have jurisdiction over the defendant, but the rule does state that “The court ***must*** issue a warrant—or at the government’s request, a summons—for each defendant named in an indictment . . .” (emphasis and underline added). The Government does not address the fact that no warrant was issued for arrest and/or no summons was issued instead of an arrest warrant. Plain and simple, this rule was not followed. Just because the prosecutor claims that the rule itself provides no remedy for the failure to follow said rule, does not mean the rule can be disregarded and/or not adhered to because it (the rule) states ‘no remedy’ within itself for failing to comply. Many rules of the Fed. R. Crim. P. do not state remedies for failure to comply within the rules themselves. It is the Court that decides the remedy for the failure to follow the rules set forth and even that can be challenged. It is not up to those who have broken the rules to decide upon the remedy for their failure to comply, as counsel for the government appears to try to be doing by stating that the rule provides no remedy.

The Government also states that the defendant cannot identify any injury for not first being arrested by a warrant-bearing law enforcement officer prior to appearing in court for this case. This is not true. The Government cannot speculate on what injuries and what suffering I, Kevin Smith, the defendant, have gone through. The flawed process that has/is going on is extremely stressful and disruptive of one’s life in general. The arrest/summons alone is not the

issue. What is worrisome is potentially being convicted based upon false documents filed on record with the Court. Of course, I, Kevin Smith, the defendant, do not seek or wish to be arrested in conjunction with this case or for any other matter. With that being stated again, it does not excuse or take away from the fact that the Government did not follow the rules. There did not have to be an arrest warrant in order to comply with Rule 9 of Fed. R. Crim. P., a summons could have been issued and served, but that did not happen either. The Government does not note nor cite any exceptions to the rule that were applied to this case which would have allowed them to disregard this rule of procedure. It is a fact that this rule was violated, and the Government has shown no circumstance or reason that would have allowed him to forgo the rule as requested on the Motion to Dismiss (Dkt. 48 at 22).

The Government states that I, Kevin Smith, have contradicted my assertion that no judge has ever informed me of the charges against me. There is no contradiction, it is factual, and I challenge the prosecution to obtain any proof to show that any judge at any hearing informed me of the charges against me. For that matter, no arresting officer, nor Magistrate Judge, nor any summons issued informed me of any charges that were against me. Seema Ahmad, the attorney that was court appointed, went through the indictment with me outside of court, and I told her (and the Court) on numerous occasions that I did not understand the charges. By me stating that I do not understand the charges against me does not indicate or prove that a judge has informed me of the charges against me. A judge may have addressed the charges, as Judge Kness merely referred to the charges during the Faretta colloquy, but that does not constitute that the proper procedure was followed. Not only did no judge ever inform me of my rights at any time throughout this case, but it appears that the Court and counsel for the government have conspired with Joshua B. Adams in an attempt to manipulate me, Kevin Smith, the defendant, into waiving

my rights by trying to convince me to voluntarily take an oath to testify to my answers given about questions regarding whether I had the capability of understanding what I've been charged with and that I understand what I'm giving up by proceeding Pro Se. More importantly, in his response, the Government seems to not address all of the rule failures that have occurred. Not only did the judges in this case not inform me, Kevin Smith, the defendant, of the charges against me, but failed to inform me of any of my rights listed in Fed. R. Crim. P. Rule 5(d). Also, any references to the government's counsel speculating my level of understanding of the charges should be stricken from the record.

The Government has also included in his response the judge's failure to comply with Fed.R.Crim.P. 5(f)(1), relating to the issuance of an oral and written order to prosecution and defense counsel confirming the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny. The prosecutor states that any such failure of this rule can be attributed to the fact that the rule provides that these orders should be issued "on the first scheduled date when both prosecutor and defense counsel are present,". When both the prosecutor and the defense counsel were present at the initial hearing this rule was not followed. Just because the defendant didn't/doesn't understand the charges, the judges in this case each had multiple opportunities to follow this rule. Again, as stated in the memorandum (Dkt. 49) both judges for this case had ample opportunity to comply with this rule. Furthermore, it is not the Government's place to state or imply why this rule was not followed, as it was not the prosecution's lawful responsibility to give the orders, nor does he have the authority to remedy the failure. Whatever the prosecution is referring to (Dkt. 65 at 4) by the "Court having recently addressed the government about its disclosure obligations" is without merit because the rule was not followed. The rule clearly states that "the judge shall issue an oral and written order" and it is easy to see that no order, oral nor written, was given by either judge in this case. It also

should be noted that two similar cases within the Northern District of Illinois (Lajewski 21CR064 and Lurigio 21CR387), in which the defendants have allegedly been charged with bank fraud, had this rule complied with by the judges that are presiding over the mentioned cases, one in which has the same judge that is currently presiding over the case in which I, Kevin Smith, am the defendant. Can the Court or counsel for the government please disclose to me why this order was followed in those two cases and not this one?

The Government states that I complained about the amount of time it took for a set of the discovery materials to be given to me, Kevin Smith, the defendant. It was a factual statement at (Dkt. 49 at 16), not a complaint. The prosecutor also chose to include my personal document filed for my mailing address as an attached exhibit, which was irrelevant to this motion and appears to be a maneuver to characterize me in a particular way. This also appears to be a violation of the Privacy Act and an intrusion of my fourth amendment rights. It appears that a subpoena would have had to been issued in order to obtain a document that was part of a private contract between me and the service provider - all just to publicly display in the court case to compare an alleged seven-day delay of me supplying the notarized document back to the service provider as an excuse for the prosecution to not have given me full discovery until August 17, 2021. The prosecution had from March 16, 2021 through July 30, 2021, which is 136 days (and even more days than that), but still did not have full discovery, yet chose to exhibit my private document as an excuse for him not giving me full discovery. It must be noted also that at all of the various Court hearings and all of the various interactions between the Court and I, the defendant, Kevin Smith, the prosecutor never had to ask for an extension of time nor had to mention his discovery items or obligation to me. It was only brought up as an excuse to try to characterize me as somehow causing a delay or being a part of the problem for not receiving the discovery. This has not absolved the judges of their responsibility to disclose in both oral and written orders of the rule set forth in Rule 5(f).

It is remarkable that the prosecutor did not address the Notice of Arraignment and Plea document that is filed at Docket 5 which falsely states that I, Kevin Smith, the defendant, was in custody and furthermore had the document mailed to an address that has never been a legal address for me. The Government chose not to address the fact that numerous officers of the Court have proceeded with this case and made orders based upon false documentation on record that I, Kevin Smith, was in custody (when I was not). It is on record for this case that I was ordered bond and release conditions and ordered 'released after processing' all of which are fictitious due to the fact that I was not in custody. It is unbelievable that this overwhelmingly huge issue of governmental false information has been ignored, but something as insignificant to this case and ultimately my private document has been raised and put so unnecessarily as an exhibit for public viewing.

Counsel for the Government states that nothing improper occurred when the government notified attorney Stephen Richards of the return of the indictment in this case. While the indictment itself is public record, including Stephen Richards as my retained attorney was/is false. At the first hearing with Judge Kness, on May 18, 2021, he stated that Stephen Richards was on the docket and filed an appearance, then, after a pause, stated he was talking with his courtroom deputy about why Mr. Richard's name was on the docket. The judge did not tell me what he and his courtroom deputy spoke about in regard to Stephen Richards, but he directed me to tell him if Mr. Richards was ever representing me in this case, to which I replied no. Again, as I, Kevin Smith, the defendant, stated numerous times, had no contact with attorney Stephen Richards for over four years before he contacted me in regard to this case. I asked for proof of a valid signed retainer or authorization agreement which would have indicated that Stephen Richards was authorized to represent me. There is none, which is why it is false and he should not have been listed as my retained attorney. The government violated the Privacy Act by contacting Stephen Richards to have him

contact me, so I would contact the Court and show up in court, thus subjecting myself unknowingly to the Court's restrictive jurisdiction under false and illegal pretenses.

Continuing on with improper occurrences, again nothing was mentioned about how attorney Joshua B. Adams obtained my personal private contact information. It has been very clear that I, Kevin Smith, the defendant, chose to represent myself since the hearing on April 27, 2021. I did not give any authorization or consent to have my information given to Joshua B. Adams, yet he somehow had my phone number and email addresses. I have repeatedly asked the Court how Mr. Adams obtained my information and even asked Joshua B. Adams himself how he obtained my personal contact information. The Court still has not answered my questions which have been addressed verbally and via motion and when I asked Mr. Adams how he obtained my information during a hearing on June 30, 2021, the judge yelled at me to 'stop talking' thus not allowing the question to be answered. Again, this issue has not been resolved and is in violation of the Privacy Act of 1974.

The Court and counsel for the government have continually tried to create a false narrative that I am an uncooperative and disruptive defendant when that is completely untrue. Counsel for the government submitted case law on the memorandum at docket 26.

The following is an excerpt from the government's memorandum at Dkt. 26:

'Defendant Smith's behavior has not yet risen to the level of disruption found in Brock or Brown. However, the Court has already observed during the June 9, 2021 hearing in this case that defendant was being "obstinate" and was "being willfully resistant to understanding [the Court]." If defendant's conduct worsens and makes it very difficult for the Court to move the case forward, the Court may terminate defendant's self-representation, even if the Court had previously allowed defendant to proceed pro se.'

The following is an excerpt from Dkt. 32, memorandum/affidavit from the defendant, Kevin Smith:

‘I have made an effort to be very polite and respectful to the court and explained that I meant no disrespect to the judge or the court. The judge actually thanked me and said he understood why I was asking the questions. The judge also stated that my demeanor was respectful towards the court before alleging that I was being obstinate. The apparent narrative that the judge and the prosecution are trying to convey by speculating that my conduct in court could potentially worsen is meritless and the references to the other cases regarding a defendant's behavior should be stricken from the record.’

Once again, the case law, from the government's response at Dkt. 65, citing *United States v. James*, 328 F.3d 953, 954 (7th Cir. 2003) that the prosecutor is choosing to use goes right along with the false narrative that he is still trying to portray me as an extremely disruptive and unhinged defendant, which again is so very far from the truth.

The court on numerous occasions has tried to classify my attempted objections to the prosecution's motions for the exclusion of time under the Speedy Trial Act as me, the defendant, Kevin Smith, disingenuously wanting to go to trial in 70 days. See docket's minute entry from 7/30 (Dkt. 35), Transcript at Dkt. 40 (pgs. 38-42), docket's minute entry from October 14, 2021 (Dkt. 53). This response has addressed the numerous violations and possible misconduct that the prosecution has engaged in. It appears that the Court feels as if I should allow counsel for the government and the Court to break rules and allow both bodies of the court to take as long as they need to set the conditions and narrative that creates an unfair and bias case against me. I would like to state that if the prosecution had followed all of the rules and laws in the appropriate

manner then the Court would be justified in its opinion of allowing the exclusions of time that I objected to. This is not and has not been the case.

I would like to pose these questions to the Court prior to its ruling on the motion at docket 48:

1. How can this case proceed when there is false documentation recorded on the docket and judicial officers have knowingly acted upon it as if it were true and correct?
2. How can this case proceed when rules from the Fed. R. of Crim. P. have been violated by the prosecution for the government and the judges that did and do preside over this case?
3. Why won't the Court disclose how my personal contact information was obtained by an attorney who appeared only because he was asked to do so by the Court and not at my request?
4. How can there be an order for Conditions of Release and Bond when I was not in custody?
5. How is it that I had to relinquish my FOID and CCL cards, along with my firearm, due to a condition of an order setting conditions of release when I was not released because I was never in custody?
6. What authority did the government have to list Stephen Richards as a retained attorney for this case when there was never any proof of him representing me?

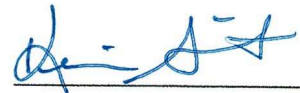
Considering the pattern of blatant disregard of the clearly established Fed. R. of Crim. P. by the counsel for the government, I ask the Court how could it honestly and fairly trust that the indictment was executed in a proper and legal manner according to the established procedures? The fact that there are false documents and statements filed by the counsel for the government that have also been endorsed and approved by judicial officers proves that nothing in this case can be considered factual. There is a clear fruit of the poison tree analogy that comes to

mind. If the Notice of Arraignment and Plea (Dkt. 5) was a falsified document and the Privacy Act was violated to lure me into court by way of deceptive and illegal means – how can it be trusted that anything else counsel for the government has submitted isn't manipulated or tainted? Counsel for the government has been allowed time to produce the documentation requested in the Motion to Dismiss at docket 48 that would prove they acted in an ethical and legal manner. They have failed to produce any documentation that would have justified their actions. The Government states the defendant's claims are without merit when in fact it is the Government that has failed, from the beginning of this case, to follow the rules that have been put in place. All that anyone needs to do to verify that rules have not been followed by the prosecution and Court is to review the docket of this case. You will be able to confirm that no arrest warrant nor summons was issued nor served, that there are fictitious documents filed on the record that have been knowingly acted upon by numerous judicial officers, and the defendant's rights have been violated. This case should be dismissed with extreme prejudice due to the numerous undisputable due process violations under the fourth (4th), fifth (5th), sixth (6th), and fourteenth (14th) amendments of the United States Constitution and the disregard of the Fed. R. of Crim. P.

ATTESTATION

I declare that to the best of my knowledge under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Kevin Smith', is written over a horizontal line.

Kevin Smith
executed on Nov. 12, 2021

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was sent via email on November 12, 2021 to the Northern District of IL electronic filing system at Temporary_E-Filing@ilnd.uscourts.gov

I hereby certify that a copy of this document was sent via email on November 12, 2021 to Judge John F. Kness in care of Enjoli Fletcher at Enjoli_Fletcher@ilnd.uscourts.gov

I hereby certify that a copy of this document was sent via email on November 12, 2021 to Stephen Heinze at Stephen.heinze@usdoj.gov